

**REMARKS*****Summary of the Amendment***

Upon entry of the above amendment, claims 1, 9, 10, 12, 13, 16, 17, 22, 25, 27, 29, 36, 40, 42, and 46 will have been amended and claims 2, 4 – 8, 28, 41, and 47 will have been canceled without prejudice or disclaimer. Accordingly, claims 1, 3, 9 – 27, 29 – 40, 42 – 46, and 48 – 51 currently remain pending.

***Summary of the Official Action***

In the instant Office Action, the Examiner has rejected claims 11, 13, and 25 based solely upon formal matters and has rejected claims 1 – 51 over the art of record. By the present amendment and remarks, Applicants submit that the objections and rejections have been overcome, and respectfully request reconsideration of the outstanding Office Action and allowance of the present application.

***Traversal of Rejection Under 35 U.S.C. § 112, Second Paragraph***

Applicants traverse the rejection of claims 11, 13, and 25 under 35 U.S.C. §112, second paragraph, as being indefinite.

By the present amendment, claims 13 and 26 have been amended to even more clearly recite the subject matter that the inventors regard as their invention. Accordingly, reconsideration and withdrawal of the rejections is requested.

Further, Applicants traverse the rejection of claim 11. in this regard, Applicants direct the Examiner's attention to paragraph [0014], which discloses that pneumatic measurement can be utilized "additionally or alternatively to the optical diameter measurement." Thus, Applicants submit that, upon reviewing the instant disclosure and the pending claims, one ordinarily skilled in the art would be able to readily ascertain

the scope of the claim 11, such that this claim is clear and unambiguous.

Accordingly, Applicants further request that the Examiner reconsider and withdraw the formal rejection of claim 11 and indicate that all pending claims are fully in compliance with the requirements of the statute.

***Traversal of Rejection Under 35 U.S.C. § 102(b)***

1. *Over Cholet*

Applicants traverse the rejection of claims 1, 2, 4, 5, 8, 14, 16, 25, 34, 37, 38, 40, 41, 46, and 47 under 35 U.S.C. §102(b) as being anticipated by CHOLET (U.S. Patent No. 5,311,291). The Examiner asserts that CHOLET shows all of the recited features of the present invention. Applicants traverse the Examiner's assertions.

Applicants' independent claim 1, as currently amended, recites, *inter alia*, conveying the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner in a conveyor line, and optically measuring a length and a diameter of the bar-shaped articles. Applicants' independent claim 25, as currently amended, recites, *inter alia*, a conveyor line structured and arranged to convey the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner, and an optical measuring device structured and arranged to measure at least a length and a diameter of the bar-shaped articles. Applicants' independent claim 40, as currently amended, recites, *inter alia*, a conveyor for conveying bar-shaped articles of the tobacco processing industry in a lengthwise axial manner, and a measuring device coupled to said conveyor to measure at least a length and a diameter of the bar-shaped articles, and Applicants' independent claim 46, as currently amended, recites, *inter alia*, conveying the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner, and

*measuring at least a length and a diameter* of the bar-shaped articles. Applicants submit that CHOLET fails to disclose at least the above-noted features of the present invention.

Applicants note that CHOLET discloses a device using a laser beam to measure the diameter of cigarettes. In particular, the laser beam scans a cross-section of a cigarette in order to ascertain a cross-sectional profile of the cylindrical cigarette. However, in contrast to at least independent claims 1, 25, 40, and 46, as currently amended, CHOLET fails to disclose measuring a length *and* a diameter of the cigarettes.

Because CHOLET fails to disclose at least the above-noted features of the invention, Applicants submit that this document fails disclose each and every recited feature of the claims, as currently amended. Thus, Applicants submit that CHOLET fails to provide an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. §102(b), such that the instant rejection should be withdrawn.

Further, Applicants note that claims 14, 16, 34, 37, and 38 are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 1, 14, 16, 25, 34, 37, 38, 40, and 46 under 35 U.S.C. §102(b) and indicate that these claims are allowable.

## 2. Over Jung

Applicants traverse the rejection of claims 1, 2, 5, 12 – 20, 22, 23, 25, 28, 29, 34, 38 – 41, 44, 46, 47, and 50 under 35 U.S.C. §102(b) as being anticipated by JUNG

(U.S. Patent No. 4,171,161). The Examiner asserts that JUNG shows all of the recited features of the present invention. Applicants traverse the Examiner's assertions.

Applicants' independent claims, as currently amended, are directed to the testing of bar-shaped articles of the tobacco processing industry, which is not taught or even arguably suggest by JUNG. Thus, Applicants submit that JUNG fails to disclose at least the above-noted features of the present invention.

Moreover, while JUNG refers to a transport direction, the document fails to provide any teaching or suggestion of a conveyor for conveying the articles in a lengthwise axial manner, as recited in at least independent claims 1, 25, 40, and 46, as currently amended,.

Because JUNG fails to disclose at least the above-noted features of the invention, Applicants submit that this document fails disclose each and every recited feature of the claims, as currently amended. Thus, Applicants submit that JUNG fails to provide an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. §102(b), such that the instant rejection should be withdrawn.

Further, Applicants note that claims 12 – 20, 22, 23, 29, 34, 38, 39, 44, and 50 are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 1, 12 – 20, 22, 23, 25, 29, 34, 38 – 40, 44, 46, and 50 under 35 U.S.C. §102(b) and indicate that these claims are allowable.

3. Over Marshall

Applicants traverse the rejection of claims 1, 2, 5, 25, 28, 29, 34, 35, 38, 40, 41, 46, and 47 under 35 U.S.C. §102(b) as being anticipated by MARSHALL (U.S. Patent No. 4,895,449). The Examiner asserts that MARSHALL shows all of the recited features of the present invention. Applicants traverse the Examiner's assertions.

Applicants' independent claim 1, as currently amended, recites, *inter alia*, conveying the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner in a conveyor line, and optically measuring a length and a diameter of the bar-shaped articles. Applicants' independent claim 25, as currently amended, recites, *inter alia*, a conveyor line structured and arranged to convey the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner, and an optical measuring device structured and arranged to measure at least a length and a diameter of the bar-shaped articles. Applicants' independent claim 40, as currently amended, recites, *inter alia*, a conveyor for conveying bar-shaped articles of the tobacco processing industry in a lengthwise axial manner, and a measuring device coupled to said conveyor to measure at least a length and a diameter of the bar-shaped articles, and Applicants' independent claim 46, as currently amended, recites, *inter alia*, conveying the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner, and measuring at least a length and a diameter of the bar-shaped articles. Applicants submit that MARSHALL fails to disclose at least the above-noted features of the present invention.

Applicants note that, while MARSHALL discloses a device for measuring the diameter of a rod shaped article, this document fails to provide any teaching of measuring the length of the rod shaped articles. Thus, Applicants submit that

MARSHALL, in contrast to at least independent claims 1, 25, 40, and 46, as currently amended, fails to disclose measuring a length *and* a diameter of the cigarettes.

Because MARSHALL fails to disclose at least the above-noted features of the invention, Applicants submit that this document fails disclose each and every recited feature of the claims, as currently amended. Thus, Applicants submit that MARSHALL fails to provide an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. §102(b), such that the instant rejection should be withdrawn.

Further, Applicants note that claims 29, 34, 35, and are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 1, 25, 29, 34, 35, 38, 40, and 46 under 35 U.S.C. §102(b) and indicate that these claims are allowable.

4. Over Harris

Applicants traverse the rejection of claims 40, 41, 45, 46, 47, and 51 under 35 U.S.C. §102(b) as being anticipated by HARRIS (U.S. Patent No. 4,043,673). The Examiner asserts that HARRIS shows all of the recited features of the present invention. Applicants traverse the Examiner's assertions.

Applicants' independent claim 40, as currently amended, recites, *inter alia*, a *conveyor for conveying bar-shaped articles of the tobacco processing industry in a lengthwise axial manner*, and a *measuring device coupled to said conveyor to measure at least a length and a diameter* of the bar-shaped articles, and Applicants' independent claim 46, as currently amended, recites, *inter alia*, conveying the bar-shaped articles of

the tobacco processing industry in a *lengthwise axial manner*, and *measuring at least a length and a diameter* of the bar-shaped articles. Applicants submit that HARRIS fails to disclose at least the above-noted features of the present invention.

Applicants note that HARRIS shows an optical gauging device directed to surface monitoring. Thus, Applicants submit that HARRIS fails to provide any teaching or suggestion of conveying bar-shaped articles in a lengthwise axial manner or optically measuring a length and a diameter of the bar-shaped articles, as recited in at least independent claims 40 and 46, as currently amended.

Because HARRIS fails to disclose at least the above-noted features of the invention, Applicants submit that this document fails disclose each and every recited feature of the claims, as currently amended. Thus, Applicants submit that HARRIS fails to provide an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. §102(b), such that the instant rejection should be withdrawn.

Further, Applicants note that claims 45, and 51 are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 40, 45, 46, and 51 under 35 U.S.C. §102(b) and indicate that these claims are allowable.

5. Over Hapke

Applicants traverse the rejection of claims 25, 32, and 33 under 35 U.S.C. § 102(b) as being anticipated by HAPKE (U.S. Patent No. 5,715,843). The Examiner asserts that lines 1 – 5 of the Abstract of HAPKE discloses all of the recited features of

the present invention. Applicants traverse the Examiner's assertions.

Applicants' independent claim 25, as currently amended, recites, *inter alia*, a *conveyor line structured and arranged to convey the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner*, and an *optical measuring device structured and arranged to measure at least a length and a diameter* of the bar-shaped articles. Applicants submit that HAPKE fails to disclose at least the above-noted features of the present invention.

Applicants note that, while HAPKE shows an optical device for measuring cigarette diameter, this document fails to disclose measuring length. Moreover, Applicants note that, as discussed in HAPKE, the cigarettes are conveyed in such a manner that "beam 8 is temporarily intercepted by one end portion of a cigarette 11 which is being advanced sideways (in a direction *at right angles to its longitudinal axis*) by a combined advancing and rotating system including a drum-shaped rotary conveyor 20a and a stationary or mobile rolling member 20b." [emphasis added]. Thus, Applicants submit that HAPKE further, fails to disclose conveying the articles in a lengthwise axial manner.

Because HAPKE fails to disclose at least the above-noted features of at least independent claim 25, Applicants submit that this document fails disclose each and every recited feature of the claims, as currently amended. Thus, Applicants submit that HAPKE fails to provide an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. §102(b), such that the instant rejection should be withdrawn.

Further, Applicants note that claims 32 and 33 are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 25, 32, and 33 under 35 U.S.C. §102(b) and indicate that these claims are allowable.

6. Over Kirschtein

Applicants traverse the rejection of claims 1, 6, 7, 9, 10, 25, 36, 40, 41, 42, 46, 47, and 48 under 35 U.S.C. §102(b) as being anticipated by KIRSCHTEIN (U.S. Patent No. 4,198,165). The Examiner asserts that KIRSCHTEIN shows all of the recited features of the present invention. Applicants traverse the Examiner's assertions.

Applicants' independent claim 1, as currently amended, recites, *inter alia*, conveying the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner in a conveyor line, and optically measuring a length and a diameter of the bar-shaped articles. Applicants' independent claim 25, as currently amended, recites, *inter alia*, a conveyor line structured and arranged to convey the bar-shaped articles of the tobacco processing industry in a lengthwise axial manner, and an optical measuring device structured and arranged to measure at least a length and a diameter of the bar-shaped articles. Applicants' independent claim 40, as currently amended, recites, *inter alia*, a conveyor for conveying bar-shaped articles of the tobacco processing industry in a lengthwise axial manner, and a measuring device coupled to said conveyor to measure at least a length and a diameter of the bar-shaped articles, and Applicants' independent claim 46, as currently amended, recites, *inter alia*, conveying the bar-

shaped articles of the tobacco processing industry in a *lengthwise axial manner*, and *measuring at least a length and a diameter* of the bar-shaped articles. Applicants submit that MARSHALL fails to disclose at least the above-noted features of the present invention.

Applicants note that, while KIRSCHTEIN discloses a device for measuring the diameter and length of rod shaped articles, this document fails to provide any teaching of conveying the rod shaped articles in a lengthwise axial manner, as recited in at least independent claims 1, 25, 40, and 46, as currently amended.

Because KIRSCHTEIN fails to disclose at least the above-noted features of the invention, Applicants submit that this document fails disclose each and every recited feature of the claims, as currently amended. Thus, Applicants submit that KIRSCHTEIN fails to provide an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. §102(b), such that the instant rejection should be withdrawn.

Further, Applicants note that claims 9, 10, 36, 42, and 48 are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 1, 9, 10, 25, 36, 40, 42, 46, and 48 under 35 U.S.C. §102(b) and indicate that these claims are allowable.

***Traversal of Rejection Under 35 U.S.C. § 103(a)***

1. *Over Jung*

Applicants traverse the rejection of claims 21 and 24 under 35 U.S.C. §103(a) as being unpatentable over JUNG. While acknowledging that JUNG fails to disclose a laser light source, the Examiner asserts it would have been obvious to modify JUNG to include such a laser light source. Applicants traverse the Examiner's assertions.

As noted above, JUNG fails to teach or suggest measuring the diameter and the length of rod-shaped articles of the tobacco processing industry, and further fails to provide any teaching or suggestion for conveying the rod shaped articles in a lengthwise axial manner, as recited in at least independent claim 1, as currently amended.

As this document fails to teach or suggest at least the above-noted features of the invention, Applicants submit that no proper modification of JUNG can render unpatentable the combination of features recited in at least independent claim 1, as currently amended.

Further, Applicants note that claims 21 and 24 are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 21 and 24 under 35 U.S.C. §103(a) and indicate that these claims are allowable.

2. Over Any of the Previously Applied Document

Applicants traverse the rejection of claims 3, 26, 27, 30, and 31 under 35 U.S.C. §103(a) as being unpatentable over any of the previously applied documents. The Examiner asserts it would have been obvious to use any of the above-noted measuring

devices to measure any rod shaped or bar shaped items of interest, and the use of any appropriate handling mechanism would have been obvious. Applicants traverse the Examiner's assertions.

As noted above, the foregoing documents fail to teach or suggest measuring diameter *and* length of rod or bar shaped items of the tobacco processing industry. Further, Applicants note that the applied art fails to provide any teaching or suggestion of measuring filter bars, a filter magazine, or a braking device and accelerating device.

Because the above-applied documents fails to teach or suggest at least the above-noted features of the instant invention, Applicants submit that no proper modification of these documents can render unpatentable the combination of features recited in at least claims 2, 26, 27, 30, and 31.

Further, Applicants note that claims 2, 26, 27, 30, and 31 are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 3, 26, 27, 30, and 31 under 35 U.S.C. §103(a) and indicate that these claims are allowable.

3. Over Kirschtein in view of Jung

Applicants traverse the rejection of claims 43 and 49 under 35 U.S.C. §103(a) as being unpatentable over KIRSCHTEIN in view of JUNG. The Examiner asserts it would have been obvious to modify KIRSCHTEIN to include the light detection measurement device of JUNG. Applicants traverse the Examiner's assertions.

Applicants note that neither KIRSCHTEIN nor JUNG provide any teaching or suggestion for conveying rod shaped articles of the tobacco processing industry in a lengthwise axial manner, as recited in at least independent claims 40 and 46, as currently amended.

Because the above-applied documents fails to teach or suggest at least the above-noted features of the instant invention, Applicants submit that no proper modification of these documents can render unpatentable the combination of features recited in at least claims 43 and 49.

Further, because KIRSCHTEIN discloses measuring the rods while conveyed in a transverse axial direction while on a drum, it is not apparent that the light detection measuring device of JUNG would be able to successfully measure the lengths and diameters of the rods while in the drum of KIRSCHTEIN.

Because it is not apparent from the applied art that the asserted combination would successfully achieve its desired task, Applicants submit that the art of record fails to teach or suggest the requisite motivation or rationale for combining KIRSCHTEIN and JUNG in the manner asserted by the Examiner.

Further, Applicants note that claims 43 and 49 are allowable at least for the reason that these claims depend from allowable base claims and because each claim recites additional features that further defines the invention over the art of record.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 43 and 49 under 35 U.S.C. §103(a) and indicate that these claims are allowable.

***Application is Allowable***

Thus, Applicants respectfully submit that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. §102 and 103, and respectfully request the Examiner to indicate allowance of each and every pending claim of the present invention.

***Authorization to Charge Deposit Account***

The undersigned authorizes the charging of any necessary fees not explicitly identified, including any extensions of time fees required to place the application in condition for allowance by Examiner's Amendment, to Deposit Account No. 19 - 0089 in order to maintain pendency of this application.

**CONCLUSION**

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicants' invention, as recited in each of claims 1, 3, 9 – 27, 29 – 40, 42 – 46, and 48 – 51. The claims have been amended to eliminate any arguable basis for rejection under 35 U.S.C. §112. In addition, the applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now

believed to be appropriate.

Respectfully submitted,  
Dr. Dierk SCHROEDER et al.

A handwritten signature in black ink, appearing to read 'Neil F. Greenblum', written over a horizontal line.

Neil F. Greenblum

Reg. No. 28,394

Robert W. Mueller

Reg. No. 35,043

March 13, 2006  
GREENBLUM & BERNSTEIN, P.L.C.  
1950 Roland Clarke Place  
Reston, Virginia 20191  
(703) 716-1191